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Attorneys for Federal Defendant

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

|                                 |   |   |
|---------------------------------|---|---|
| SARI ISSA NATOUR,               | ) | No. C 07-3764 JSW                         |
|                                 | ) |   |
| Plaintiff,                      | ) | NOTICE OF MOTION AND MOTION TO            |
|                                 | ) | DISMISS PLAINTIFF'S COMPLAINT;            |
| v.                              | ) | DECLARATIONS OF MARISSA J.                |
|                                 | ) | SUAREZ AND JULIE A. ARBUCKLE              |
| U.S. DEPARTMENT OF AGRICULTURE, | ) | [Fed. Rules of Civ. Proc. 4(m), 12(b)(4), |
|                                 | ) | 12(b)(5), and 12(b)(6)]                   |
| Defendant.                      | ) |   |
|                                 | ) | Date: April 4, 2008                       |
|                                 | ) | Time: 9:00 a.m.                           |
|                                 | ) | Ctrm: 2, 17 <sup>th</sup> Floor           |

**NOTICE OF MOTION**

TO PLAINTIFF AND HIS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on April 4, 2008 at 9:00 a.m., or as soon thereafter as the matter may be heard in the above-entitled Court, before the Honorable Jeffrey S. White, United States District Judge, Courtroom 2, 17<sup>th</sup> Floor, 450 Golden Gate Avenue, San Francisco, California 94102, Defendant U.S. Department of Agriculture ("USDA") will and hereby does move the court for an order dismissing this action pursuant to Federal Rules of Civil Procedure 12(b)(4), 12(b)(5) and 12(b)(6) on the grounds that: (1) Plaintiff Sari Issa Natour ("Plaintiff") failed to serve the Government within 120 days of filing his Complaint as Federal Rule of Civil Procedure 4(m) requires; and (2) the United States, not the USDA, is the only proper defendant

MOTION TO DISMISS  
C 07-3764 JSW

1 under the Food Stamp Act (7 U.S.C. §2023) in this action appealing the USDA's final agency  
2 decision disqualifying Plaintiff from participating in the Food Stamp Program. The USDA  
3 requests that the dismissal for failure to comply with Rule 4(m) be without prejudice, and that the  
4 dismissal of the USDA as an improper defendant be with prejudice.

5 The motion will be based on this Notice of Motion and Motion, the attached Memorandum of  
6 Points and Authorities, the attached Declarations of Julie A. Arbuckle and Marissa J. Suarez, the  
7 exhibits attached thereto, and the pleadings and papers filed with the Court in this action.

## 8 MEMORANDUM OF POINTS AND AUTHORITIES

### 9 I. INTRODUCTION

10 The USDA requests dismissal of Plaintiff's Complaint on two separate and independent  
11 grounds. First, Plaintiff failed to effectuate service on either the U.S. Attorney's Office, the U.S.  
12 Attorney General, or the Secretary for the USDA within the 120 deadline that Federal Rule of  
13 Civil Procedure 4 mandates. Given that Plaintiff cannot satisfy his burden of proving that he  
14 missed this deadline for good cause, and has no excuse other than his counsel's inadvertence or  
15 mistake, the Court should dismiss this action without prejudice pursuant to Federal Rule of Civil  
16 Procedure 4(m).

17 Second, Plaintiff has only named the USDA as a defendant in this action, but the United  
18 States is the only proper defendant in a claim filed in district court under the Food Stamp Act. 7  
19 U.S.C. §2023(a)(13). Thus, Plaintiff has not and cannot state a claim against the USDA and his  
20 claims against the USDA should be dismissed with prejudice.

### 21 II. STATEMENT OF FACTS

22 Plaintiff filed his Complaint on July 23, 2007, and made no attempt to serve the Government  
23 before the Initial Case Management Conference on October 26, 2007. (Complaint, Exh. A to  
24 Arbuckle Dec.) At the Initial Case Management Conference, Plaintiff's counsel, Orestes Cross,  
25 entered his appearance for Plaintiff, and appears to have represented that the Government was  
26 served. (10/26/07 Minute Order, Exh. B to Arbuckle Decl.) Then, on November 1, 2007, a  
27 process server delivered a copy of the Complaint to the home address of USDA Administrative  
28 Review Officer, Richard Havnen, in Bakersfield, California, still making no attempt to serve the

U.S. Attorney's Office, the Attorney General, or the Secretary of the USDA as Federal Rule of Civil Procedure 4(i) requires. (Return of Service, Exh. C to Arbuckle Decl.; Suarez Dec. ¶¶2-3). On November 20, 2007, the 120 day deadline for Plaintiff to effectuate service on the Government expired – about a month after Plaintiff's counsel appeared in this case. On December 14, 2007, a process server delivered a copy of the Summons and Complaint to the U.S. Attorney's Office. (Return of Service, Exh. D to Arbuckle Decl.) To this date, Plaintiff has not filed any Return of Service on the Attorney General or the Secretary of the USDA, and the USDA has determined it was not served with Plaintiff's Summons and Complaint until December 28, 2007. (Suarez Decl. ¶2).

### III. LEGAL ANALYSIS

#### A. The Legal Standards for Rule 12(b) Motions to Dismiss.

Before filing an Answer, the defendant may move to dismiss the Complaint for any of the applicable bases set forth in Federal Rule of Civil Procedure 12(b). Here, the USDA moves to dismiss for insufficiency of service of process under 12(b)(4 and 5). Where the validity of service is contested by a Rule 12 motion, the burden is on the plaintiff to establish the validity of service. Norlock v. City of Garland, 768 F.2d 654, 656 (5<sup>th</sup> Cir. 1985); Grand Entertainment Group, Ltd. v. Star Media Sales, Inc., 988 F.2d 476, 488 (3d Cir. 1993).

The USDA also moves to dismiss under Rule 12(b)(6) for failure to state a claim against the USDA given that the United States, not the USDA, is the only proper defendant under the Food Stamp Act (7 U.S.C. §2023) in this action appealing the USDA's final agency decision disqualifying Plaintiff from participating in the Food Stamp Program. The law is well-settled that a court should grant a Rule 12(b)(6) motion and dismiss the complaint where there is either a "lack of a cognizable legal theory," or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9<sup>th</sup> Cir. 1990).

#### B. Plaintiff Failed to Serve the Government Within the Required Time Period.

Service of process of a complaint against the United States government, or an Agency of the United States government, is controlled by Federal Rule of Civil Procedure 4(i), which requires specific, simultaneous acts of service upon the concerned Agency head, the United States

Attorney General's office in Washington, D.C., and the local United States Attorney's Office. Whale v. United States, 792 F.2d 951, 953-54 (9<sup>th</sup> Cir. 1986) (affirming dismissal, holding counsel's belief that service on local U.S. Attorney's Office was sufficient inadequate to show good cause or justifiable excuse; Rule 4's requirements must be followed).

Federal Rule of Civil Procedure 4(i) provides in relevant part:

**(i) Serving the United States and Its Agencies, Corporations, Officers, or Employees.**

(1) United States. To serve the United States, a party must:

(A)(i) deliver a copy of the summons and of the complaint to the United States attorney for the district where the action is brought--or to an assistant United States attorney or clerical employee whom the United States attorney designates in a writing filed with the court clerk--or (ii) send a copy of each by registered or certified mail to the civil-process clerk at the United States attorney's office;

(B) send a copy of each by registered or certified mail to the Attorney General of the United States at Washington, D.C.; and

(C) if the action challenges an order of a nonparty agency or officer of the United States, send a copy of each by registered or certified mail to the agency or officer.

(2) Agency; Corporation; Officer or Employee Sued in an Official Capacity. To serve a United States agency or corporation, or a United States officer or employee sued only in an official capacity, a party must serve the United States and also send a copy of the summons and of the complaint by registered or certified mail to the agency, corporation, officer, or employee.<sup>1</sup>

Id. (underlining added). Federal Rule of Civil Procedure 4(m) further provides that if a plaintiff fails to serve a defendant with the Summons and Complaint "within 120 days after the complaint is filed, the court -- on motion . . . -- must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period."

Under Rule 4(m), if service of the complaint and summons is not made within 120 days after filing the complaint, a motion to dismiss lies against the complaint. In enacting Rule 4(m), "Congress balanced the possible loss of a litigant's federal cause of action against the need to encourage diligent prosecution of lawsuits." Townsel v. County of Contra Costa, 820 F.2d 319, 321 (9<sup>th</sup> Cir. 1987). "The rule is intended to force parties and their attorneys to be diligent in prosecuting their causes of action." Wei v. State of Hawaii, 763 F.2d 370, 372 (9<sup>th</sup> Cir. 1985).

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<sup>1</sup> The Food Stamp Act similarly provides that copies of summons and complaints appealing the USDA's final agency decision to district court "shall be sent to the Secretary [of the USDA] or such person or persons as the Secretary may designate to receive service of process." 7 U.S.C. §2023(a)(14).

1 Plaintiff's counsel's ignorance or misunderstanding of Rule 4 does not constitute good cause  
 2 for timely service. Townsel at 319 ("To hold that complete ignorance of Rule 4(j) [now 4(m)]  
 3 constitutes good cause for untimely service would allow the good cause exception to swallow the  
 4 rule."); Whale v. United States, 792 F.2d 951, 953-54 (9<sup>th</sup> Cir. 1986) ("Whale's counsel's belief  
 5 that service on the U.S. Attorney by certified mail satisfied the requirements of Rule 4 does not  
 6 constitute justifiable excuse.") Neither does a plaintiff's counsel's inadvertence. Wei v. State of  
 7 Hawaii, 763 F.2d at 372 ("Counsel always could aver that he or she inadvertently forgot about  
 8 the 120 day limit.") The rules of service must be followed, regardless of whether the defendant  
 9 had actual notice, and of whether the statute of limitations will bar plaintiff's claim if it is  
 10 dismissed without prejudice for failure to timely effectuate proper service. Guerrero v. Baca, 154  
 11 Fed.Appx. 601 (9<sup>th</sup> Cir. 2005) ("Because the district court's discretion is broad, and we do not  
 12 require a specific test that a court must apply in exercising its discretion under Rule 4(m), we  
 13 cannot conclude that the district court abused its discretion even though the effect of the  
 14 dismissal was to bar Guerrero's claim.") (citations and quotations omitted); Wei at 372  
 15 (dismissing plaintiff's claim pursuant to Rule 4 although it will be time-barred, reasoning "Wei  
 16 may be harmed by his attorney's neglect, but litigants are bound by the conduct of their attorneys,  
 17 absent egregious circumstances which are not present here."); Tuke v. United States, 76 F.3d  
 18 155, 156 (7<sup>th</sup> Cir. 1996) (actual notice to a defendant is insufficient).

19 In this case, Plaintiff filed his Complaint on July 23, 2007, and made no attempt to serve the  
 20 Government before the Initial Case Management Conference on October 26, 2007. (Complaint,  
 21 Exh. A to Arbuckle Dec.) At the Initial Case Management Conference, Plaintiff's counsel,  
 22 Orestes Cross, entered his appearance for Plaintiff, and appears to have represented that the  
 23 Government was served. (10/26/07 Minute Order, Exh. B to Arbuckle Decl.) Then, on  
 24 November 1, 2007, a process server delivered a copy of the Complaint to the home address of  
 25 USDA Administrative Review Officer, Richard Havnen, in Bakersfield, California, still making  
 26 no attempt to serve the U.S. Attorney's Office, the Attorney General, or the Secretary of the  
 27 USDA as Federal Rule of Civil Procedure 4(i) requires. (Return of Service, Exh. C to Arbuckle  
 28 Decl.; Suarez Dec. ¶¶2-3). On November 20, 2007, the 120 day deadline for Plaintiff to

effectuate service on the Government expired – about a month after Plaintiff’s counsel appeared in this case. On December 14, 2007, a process server delivered a copy of the Summons and Complaint to the U.S. Attorney’s Office. (Return of Service, Exh. D to Arbuckle Decl.) To this date, Plaintiff has not filed any Return of Service on the Attorney General or the Secretary of the USDA, and the USDA has determined it was not served with Plaintiff’s Summons and Complaint until December 28, 2007. (Suarez Decl. ¶2).

In sum, because Plaintiff failed to serve his Summons and Complaint on the Government as Rule 4 requires, the Complaint should be dismissed without prejudice.

C. The United States Is the Only Proper Defendant In this Action Under the Food Stamp Act.

The USDA also moves to dismiss Plaintiff’s Complaint under Rule 12(b)(6) for failure to state a claim against the USDA given that the United States, not the USDA, is the only proper defendant under the Food Stamp Act in this action appealing the USDA’s final agency decision disqualifying Plaintiff from participating in the Food Stamp Program. Section 2023 of the Food Stamp Act specifically provides that the type of claim Plaintiff asserts here may be filed “against the United States in the United States court for the district in which [Plaintiff] is engaged in business.” 7 U.S.C. §2023(a)(13). Thus, the reason Plaintiff fails to allege any waiver of sovereign immunity allowing him to state a claim against the USDA is because there is none. The United States is the only proper defendant in this case. Plaintiff’s Complaint against the USDA should be dismissed for this reason also.

IV. CONCLUSION

For the above reasons, the USDA respectfully requests that the Court dismiss Plaintiff’s Complaint without prejudice for failure to comply with Rule 4(m), and dismiss the USDA with prejudice as it is an improper defendant.

DATED: February 12, 2008

Respectfully submitted,

JOSEPH P. RUSSONIELLO  
United States Attorney

  
JULIE A. ARBUCKLE  
Assistant United States Attorney

DECLARATION OF MARISSA J. SUAREZ

I, Marissa J. Suarez, do hereby declare as follows:

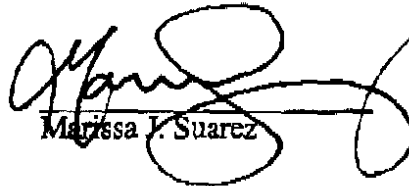
1. I am an attorney at the U.S. Department of Agriculture's ("USDA") Office of the General Counsel in San Francisco, California. I have personal knowledge of the following facts and could competently testify regarding these facts if called to do so.

2. One of my job duties as a USDA attorney is to assist the U.S. Attorney's Office in defending actions filed in federal district court under the Food Stamp Act, which often entails determining if and when the Secretary of USDA was served with such an action as Federal Rule of Civil Procedure 4 and the Food Stamp Act require. In this capacity, I have caused a diligent search to be done of the USDA's service records, and determined that Plaintiff Sari Issa Natour did not serve the USDA with the Summons and Complaint he filed in this action until December 28, 2007.

3. Richard Havnen is a USDA Administrative Review Officer who resides at 11000 Truchard Court, Bakersfield, California. He has no authority to accept service of lawsuits filed in district court on behalf of the USDA.

I declare under penalty of perjury that the above is true and correct.

Executed this 8<sup>th</sup> day of February, 2008.

  
Marissa J. Suarez



DECLARATION OF JULIE A. ARBUCKLE

I, Julie A. Arbuckle, declare as follows:

1. I am employed as an Assistant United States Attorney for the Northern District of California, and have been assigned to represent Defendant U.S. Department of Agriculture in the above-captioned case. I have personal knowledge of the following facts and could competently testify regarding these facts if called to do so.


2. Attached hereto as Exhibit A is a true and correct copy of Plaintiff's Complaint in this action, which indicates it was filed on July 23, 2007.

3. Attached hereto as Exhibit B is the Minute Order from the Initial Case Management Conference held in this case, which I printed from the Court's online docket.

4. Attached hereto as Exhibit C is the Return of Service I printed from the Court's online docket, which evidences that on November 1, 2007, a process server delivered a copy of the Complaint to the home address of USDA Administrative Review Officer, Richard Havnen, in Bakersfield, California.

5. On December 14, 2007, a process server delivered a copy of the Summons and Complaint to the U.S. Attorney's Office. A true and correct copy of the Return of Service that I printed from the Court's online docket is attached hereto as Exhibit D. To this date, Plaintiff has not filed any Return of Service on the Attorney General or the Secretary of the USDA.

I declare under penalty of perjury that the foregoing is true and correct on this 11th day of February, 2008 in San Francisco, California.

  
Julie A. Arbuckle



# Exhibit A

ORIGINAL  
FILED

JUL 23 2007

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA1 Name and Address Sari Natour, Tim's Grocery2 667 Fillmore street3 San Francisco, CA, 941174 Phone # 415-552-68305 \* 415-8166250UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIACase No. 07 37649 Sari Issa Natour

10 Plaintiff/Petitioner

Document Name:

JSW

11 vs. United States12 Department of Agriculture13 Food & Nutrition Service

14 Defendant/Respondent

Complaint for judicial  
Review of USDA Administrative  
proceeding Case # Coll636116 1. Jurisdiction. This court has jurisdiction  
17 over this complaint because it arises under the  
18 laws of the United States.20 2. Venue. Venue is appropriate in this Court  
21 because all of the acts and omissions giving  
22 rise to this lawsuit occurred in this district,  
23 and it's convenient for the defendant. Also  
24 it will be convenient for the Plaintiff or the  
25 one who represents to ask for witnesses  
26 who all live in this area  
27

3. Intradistrict Assignment. This lawsuit should be assigned to the San Francisco Division of this Court because most of the events or omissions which give rise to this lawsuit occurred in San Francisco County.
4. Plaintiff Sari Issa Natour, he is the owner of the Tim's Grocery which is located in San Francisco city.
5. I am responding to the aforementioned notice received were Tim's Grocery shall be permanently disqualified from the Food Stamp Program. The issues relating to our disqualification stems from a letter dated March 19, 2007 (copy enclosed) in which four attachments are enclosed revealing EBT transactions that establish a clear and repetitive pattern of unusual, irregular and/or inexplicable FSP activity for our type of business.
6. I have been the owner of Tim's Grocery for the last 10 years, and in that

time I have not have had any violations with the Food Stamp program or problems with any state or local government agency relating to the operations of my business.

7. United States Department of Agriculture has build up its evidences on some transactions that they suspected which represent a very small percentage of sales, and is not indicative of our overall Food Stamp Sales. However it just represent a small amount of the store's Food Stamp sales. I would like to address the attachments that had received on March 19, 07.

8. Attachment 1 from the USDA states "In a series of Food Stamp EBT transactions multiple withdrawals were made from the accounts of one or more Food stamp customers within unusually short time frames".

I do have two employees assisting customers at different time throughout the day, which means we can assist multiple customers at the same time after processing one customer's EBT card we process the next customer's card when the first transaction is completed.

9. The transactions which show the same account numbers being used within a close period of time can be explained by customers asking for different transactions for different grocery items.
10. Attachment 2 from the USDA states "In a series of Food Stamp EBT transactions, multiple withdrawals were made from a single Food stamp customer's account within usually short time frames" The explanation of exhibit 2 was already addressed in exhibit 1
11. Attachment 3 from the USDA states "Your firm completed EBT transactions for high number of customers who depleted the majority or all of their monthly Food Stamp benefits at your store" We are very friendly, competitively priced, and quite frankly there are not a lot of options for our patron, with respect to other stores accepting food stamps in our immediate area. We appreciate our customers' patronage and do not see what the issue

is with customers shopping at our grocery store with the use of the EBT card and expending the cards value only at our location. Also, sometimes what occurs as shown on the attachment is, customers will make an initial purchase then after seeing the balance remaining on their card they will make another purchase depleting the remaining amount left on their card.

12. Attachment 4 from the USDA States "In a series of Food Stamp EBT transactions, excessively large withdrawals were made from the accounts of the food stamp customers at your store."

The attachment does not appear to contain transactions that appear out of the ordinary. I have no control over the purchasing habits of my customers and believe that there is nothing irregular regarding those transactions.

13. There are three low income housing projects near my business which rely on me to provide groceries to their families as we provide excellent customer service and...

reasonable and competitive prices. The neighborhood relies on my business for their daily grocery items and it would be a disservice to my customers if I was to lose my ability to accept food stamps. It would cause most of our customers undue hardship if I was to lose the ability of accepting food stamps, as most of our food stamp customers do not have automobiles or the ability to travel to other grocery stores.

14. To support my claims, I'll get statement of oath from the customers, that they used their food stamp cards just for the nontaxable products, and ask for witnesses if necessary.

15. I would like to ask for reauthorization for EBT system to my store to keep helping the Food Stamp holders in my neighborhood and elsewhere according to the law of United States Department of Agriculture as I've been doing for the last ten years.

07.18.07

Sari Natour



# Exhibit B

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

**CIVIL MINUTE ORDER**

**JUDGE: JEFFREY S. WHITE**

**COURTROOM DEPUTY:** Jennifer Ottolini

**DATE:** October 26, 2007

**Court Reporter:** Jim Yeomans

**CASE NO. C-07-3764 JSW**

**TITLE:** Sari Issa Natour v. United States Department of Agriculture, et al.,

**COUNSEL FOR PLAINTIFF:**

Orestes Cross

**COUNSEL FOR DEFENDANT:**

No appearance by or for defendant

**PROCEEDINGS:** Initial Case Management Conference

**RESULTS:** The defendant has been served as of this date.

**Further CMC:** 1-4-08 at 1:30 p.m.

**Joint CMC Statement due:** 12-28-07

# Exhibit C

CASE NAME NATOUR V. U.S. DEPT OF AGRICULTURECASE NUMBER C 07-03764JSW

AO 88 (Rev. 1/2001) Summons in a Civil Action

## RETURN OF SERVICE

Service of the Summons and Complaint\* was made by me:

DATE

11/1/2007 4:23 PM

NAME OF SERVER (PRINT)

Vincent J. Staley

TITLE

PROCESS SERVER 311/Kern County

Check one box below to indicate appropriate method of service

DEFENDANT: U.S. DEPT. OF AGRICULTURE, FOOD AND NUTRITION SERVICE BY SERVING  
RICHARD HABENEN, ADMINISTRATIVE REVIEW OFFICER☒ Served personally upon the defendant. Place where served:

11000 TRUCHARD CT, BAKERSFIELD, CA 93312

☐ Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.

Name of person with whom the summons and complaint were left

☐ Returned unexecuted:☐ Other (specify):

## STATEMENT OF SERVICE FEES

TRAVEL

SERVICES

\$55.00

TOTAL

\$55.00

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct.

Executed on 11/1/2007

DATE

SIGNATURE OF SERVER



A.L.B.L. / BAKERSFIELD LEGAL PROCESS SERVICE

245 Stockdale Highway, Suite 101-04

Bakersfield, CA 93307

Phone: (661) 833-4506

37117

U.S. District Court, Northern District of California

UNITED STATES DISTRICT COURT

NORTHERN

District of

CALIFORNIA

SARL ISSA NATOUR

SUMMONS IN A CIVIL ACTION

V.

U.S. DEPT. OF AGRICULTURE

CASE NUMBER: C 07-03764 JSW

TO: (Name and address of Defendant)

RICHARD J. HAVEN, ADMINISTRATION REVIEW OFFICER  
C/O ACTING SECRETARY CHARLES CONNER  
U.S. DEPT. OF AGRICULTURE, FOOD AND NUTRITION SERVICE  
11000 TRUCHARD COURT  
BAKERSFIELD, CA 93312-6723

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

MR. ORESTES CROSS, ATTORNEY AT LAW  
C/O WALSTON LEGAL GROUP  
222 COLUMBUS ST., SUITE 408  
SAN FRANCISCO, CA 94133

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

RICHARD W. WIEKING

OCT 31 2007

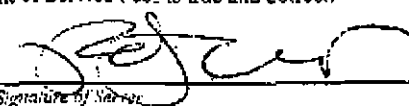
CLERK

HILARY JACKSON

RECEIVED BY CLERK

# Exhibit D

Form 440 (Rev. 8/01) Summons in a Civil Action

| RETURN OF SERVICE  |  |              |
|--|--|--------------|
| Service of the Summons and complaint was made by me: <sup>(1)</sup>  | DATE <u>12-14-07</u>   |              |
| NAME OF SERVER (PRINT)<br><u>PAUL CAVALLERO</u>  | TITLE<br><u>Investigator</u>   |              |
| Check one box below to indicate appropriate method of service  |  |              |
| <input type="checkbox"/> Served personally upon the defendant. Place where served:   |  |              |
| <input checked="" type="checkbox"/> Left copies thereof at the defendant's dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.                  |  |              |
| Name of person with whom the summons and complaint were left:  |  |              |
| <input type="checkbox"/> Returned unexecuted:  |  |              |
| <input type="checkbox"/> Other (specify):  |  |              |
| <u>DANIEL LACKEY</u><br><u>US. DA'S OFFICE</u><br><u>450 GOLDEN GATE BLVD</u><br><u>9TH FLOOR</u><br><u>SAN FRANCISCO CA</u><br><u>94102</u><br><u>4:13pm</u>  |  |              |
| STATEMENT OF SERVICE FEES  |  |              |
| TRAVEL   | SERVICES   | TOTAL \$0.00 |
| DECLARATION OF SERVER  |  |              |
| I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Return of Service and Statement of Service Fees is true and correct. |  |              |
| Executed on <u>12-14-07</u><br><div style="text-align: center;">Date</div>   | <br><div style="text-align: center;">Signature of Server</div> |              |
| <u>422 COLUMBUS AVE</u><br><u>3RD FLOOR #320</u><br><u>SAN FRANCISCO CA 94113</u><br><div style="text-align: center;">Address of Server</div>  |  |              |

(1) As to who may serve a summons see Rule 4 of the Federal Rules of Civil Procedure.



AO 440 (Rev. 8/01) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

NORTHERN

District of

CALIFORNIA

SARI ISSA NATOUR

## SUMMONS IN A CIVIL ACTION

V.  
U.S. DEPT. OF AGRICULTURE

CASE NUMBER: C 07-03764 JSW

TO: (Name and address of Defendant)

Mr. Scott Schools  
United States Attorney's Office  
450 Golden Gate Avenue, 11th Floor  
San Francisco, CA 94102

**YOU ARE HEREBY SUMMONED** and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Mr. Orestes Cross  
C/O Walston Legal Group  
222 Columbus Street, Ste. 320  
San Francisco, CA 94133

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

**RICHARD W. WIEKING**

CLERK

  
HILARY JACKSON

(By) DEPUTY CLERK

DATE

02/12/2008